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Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY,
Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California,
et al.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

JOHN J. BENNETT, JR.,
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BATAVIA, N. Y.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May It Please the Court:

The undersigned, as Attorney-General of the State of New York, and also in behalf of Hon. Mark Graves, Commissioner of Taxation and Finance, and Hons. John J. Merrill and John P. Hennessey, State Tax Commissioners of the State of New York, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

JOHN J. BENNETT, JR.,
Attorney-General of the State of New York,
The Capitol, Albany, N. Y.

SUPREME COURT OF THE UNITED STATES

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RAY L. RILEY, Controller of the State of California, *et al.*

BRIEF OF THE STATE OF NEW YORK AMICUS CURIAE.

Statement of Position.

This case appears to present the questions whether the "Federal Interpleader Act" [Judicial Code, §24 (26); 28 U. S. C. §41 (26)], as amended by the Act of January 20, 1936 (49 Stat. 1096) is to be interpreted as granting to the United States District Courts jurisdiction to determine which of two or more States has authority to impose an inheritance tax measured by the value of a decedent's intangible assets transferred by his death and whether, if so interpreted, the Act would not violate the Eleventh Amendment of the Constitution of the United States.

The State of New York, represented by its Department of Taxation and Finance and its Attorney-General, respectfully urges that the Interpleader Act is not to be so interpreted and that, if so interpreted, it would deny to the States their inherent immunity from suit at the hands of a private citizen, preserved, as to citizens of another State, by the Eleventh Amendment of the United States Constitution.

ARGUMENT.

The legal and constitutional questions involved have been thoroughly considered in the very able and convincing opinion of the Circuit Court of Appeals and, we are sure, will be exhaustively presented in the briefs and arguments of the parties to the appeal. This memorandum, therefore, will be limited to a very brief outline of the reasons why the State of New York believes that the judgment of the Circuit Court of Appeals should be affirmed.

1. The States of the Union are, by the language of the Interpleader Act, excluded from its operation. Jurisdiction is conferred by the Act only in case there are two or more adverse claimants who are "citizens of different States" and, of course, a State is not a citizen of any State.

Minnesota v. Northern Securities Co., 194 U. S. 48, 63.

2. If the Act had attempted to include States within its operation, it would, to that extent, have been invalid under Art. 3, §2 of the Constitution, conferring on this Honorable Court original jurisdiction in all

cases in which a State is a party, and under the Eleventh Amendment, which excepts from the judicial power of the United States suits in law or equity against a State by citizens of another State.

Ex Parte State of New York, No. 1, 256 U. S. 490, 497,

Monaco v. Mississippi, 292 U. S. 313.

3. The States claiming the right to impose inheritance taxes are the real parties in interest in any controversy involving their power to do so, and that is equally true where the action or suit in which the controversy is involved is brought against the State's officers or other representatives as where it is brought against the State itself.

Ex Parte State of New York, No. 1, supra, p. 500.

4. None of the exceptions to the foregoing rule are present in the instant case. It is neither alleged nor contended that the statute of either State is unconstitutional or that the representatives of either State have acted or are threatening to act arbitrarily or in excess of their statutory powers.

Ex Parte State of New York, No. 1, supra, pp. 500-502.

5. The Courts of the several States are competent to determine for themselves the question of the domicile of a decedent, and an incorrect decision of that question resulting in the imposition of inheritance taxes on intangibles by more than one State does not constitute a violation of either the due process or equal protection clauses of the Constitution.

Overby v. Gordon, 177 U. S. 214, 227,
Tilt v. Kelsey, 207 U. S. 43, 51, 53,
Baker v. Baker, Eccles & Co., 242 U. S. 394, 401, 403-404,
Dorrance v. Martin, 298 U. S. 678.

6. If, without allegation or proof, it be assumed that the representatives of one or the other of the States are acting arbitrarily or in excess of their authority, the representatives of the other State admittedly are not so acting, and the suit clearly is to be deemed one against that State.

7. As the estate in the present instance is more than sufficient to pay the tax claims of both States, even if the courts of both States should determine that the decedent was domiciled within its borders, and there is hence no controversy between the States, this Honorable Court would not feel that it had jurisdiction to determine the question of domicile in an original action to which the States were themselves parties.

Texas v. New York, 300 U. S. 642.

It is not to be assumed that there was an intention on the part of Congress to confer upon the district courts, in suits to which only the officers of the States are parties, greater jurisdiction than is possessed by this Honorable Court in actions to which the States themselves are parties.

8. Congress by the recent amendment of section 24 of the Judicial Code (Act of August 21, 1937; Public No. 332—75th Congress) has indicated very

definitely that suits of this nature were not intended to be included within the scope of the Interpleader Act. By that amendment, there was inserted in the section the following provision:

> "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

While the amendment does not affect pending suits (§2), it does disclose a policy that neither the States nor their officers should be enjoined by the district court, *in any form of suit,* from enforcing their tax claims, except in those cases where the taxpayer should be without a full and speedy remedy in the courts of the State.

In the light of this policy, it seems wholly unreasonable to suppose that Congress, no longer ago than last year, by the enactment of a general interpleader act, intended to bestow upon the district courts jurisdiction which they did not theretofore possess to enjoin a State or its officers from enforcing tax claims of the State.

9. The inclusion of the officers of the States within the terms of the Interpleader Act in cases such as this would impose upon the States' taxing authorities the tremendous burden of either defending suits throughout the entire United States or foregoing their legiti-

mate tax claims, a result which clearly was not intended by Congress, as is evidenced by the recent amendment of the Judicial Code to which reference has already been made.

For these reasons and others contained in the opinion of the learned Court below, we think that the judgment under review should be affirmed.

Respectfully submitted,

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